



MUSCOGEE (CREEK) NATION

TERO

TRIBAL EMPLOYMENT RIGHTS OFFICE

RULES AND REGULATIONS

I. DEFINITIONS

- A. **“Administration”** shall mean the Executive Branch of the Muscogee (Creek) Nation as provided in the Muscogee (Creek) Nation Constitution.
- B. **“Muscogee (Creek) Nation Indian Country”** shall mean all land held in trust or subject to restrictions by the United States for the Muscogee (Creek) Nation, or land within the original boundaries of the Muscogee (Creek) Nation and held in trust or subject to restrictions for an individual, and all land held by the Muscogee (Creek) Nation or its entities, in fee simple, and any other land within the jurisdiction of the Muscogee (Creek) Nation which land comes within the definition of “Indian Country” as defined in 18 U.S.C. § 1151.
- C. **“Core crew”** shall mean a member of a contractor or subcontractor’s crew who is a regular permanent employee that is or has been on the employer’s or subcontractor’s payroll for a period of one year continuously, or is an owner of the firm.
- D. **“Debarment List”** shall be a list of contractors which have previously provided poor performance or engaged in behavior in non-compliance with contract provisions, rules, regulations or laws.
- E. **“EEOC”** shall mean the Equal Opportunity Commission of the United States.
- F. **“Employer”** shall mean the Nation, Tribal Government, all commercial and enterprise entities, all independent agencies, and any other person, company, contractor, subcontractor or other entity located in or on Muscogee (Creek) Nation Indian Country or engaged in work with the Muscogee (Creek) Nation, its entities or wholly-owned corporations who employs at least one individual.
- G. **“Engaged in work”** is when an employer if, during any portion of a business enterprise or specific project, contract or subcontract, the employer performs work under contract with the Muscogee (Creek) Nation, its entities and wholly-owned corporations and/or the work is performed on Muscogee (Creek) Nation Indian Country.
- H. **“Indian”** shall mean a person who is an enrolled Citizen of a Federally Recognized Indian Tribe.
- I. **“Indian organization”** shall mean the governing body of any Indian Tribe or entity established or recognized by such governing body.
- J. **“Indian-owned economic enterprise”** shall mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than 51 percent (51%) of the enterprise, and the ownership shall encompass active operations, control, and manage the enterprise.

- K. **“Indian Tribe”** means an Indian Tribe, pueblo, band, Nation or other organized group or community, including any Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. §1601), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- L. **“Locally Owned”** means a business that has its headquarters and majority of its employees residing within the jurisdictional boundaries of the Muscogee (Creek) Nation.
- M. An employer is **“located in or on the Muscogee (Creek) Nation”** if, during any portion of a business enterprise or specific project, contract or subcontract, the employer maintains a temporary or permanent office or facility on or performs work on Muscogee (Creek) Nation Indian Country.
- N. **“Major Muscogee (Creek) Employer”** shall mean a business either Indian Owned or not that employs at least fifty (50) Muscogee Citizens as either part of the core crew or project crew, or has at least 75% of its entire workforce comprised of Muscogee Citizens as certified by the TERO. A business may be certified as Indian Owned, Major Muscogee Employer, or both.
- O. **“Nation”** shall mean the Muscogee (Creek) Nation.
- P. **“Tribal Citizen”** or **“Citizen”** shall mean any person who is a duly enrolled citizen of the Muscogee (Creek) Nation or other Federally Recognized Tribe, unless the context clearly indicates otherwise.
- Q. **“TERO”** shall mean the Tribal Employment Rights Office.
- R. **“TERO Staff”** shall mean employees hired by the TERO Office to carry out the functions of this Act.

II. Committee

The TERO Committee is the body tasked with certifying businesses as Native American owned economic enterprises in accordance with MCNCA Title 16 Chapter 9. The Committee consists of the Secretary of the Nation, a Business Development Specialist from the Nation's Small Business Development Center, one member from the Business & Finance Justice Committee and one member from the Land, Natural Resources & Cultural Preservation Committee of the National Council, the Chief of Staff, the Secretary of Education, Employment and Training, the Controller, the CEO of MNBE, a Designee from the Tribal Construction Department and an Assistant Attorney General of the Muscogee (Creek) Nation.

Committee meetings are held monthly, (usually on the third Thursday of each month) but may be held more frequently if necessary. Due to the nature of the information provided to the Committee as part of the TERO Certification process (including tax and other confidential business and personal information), Committee meetings are not open to the public. In order for action to be taken at a Committee meeting, a quorum of six (6) Committee members must be established. The Committee acts by majority vote.

IV. Certification Process

A. Applications

1. Each applicant applying for certification is required to fill out an application, which consists of Application for Indian Preference, TERO Form M-1, and TERO Form P-1 and provide **all** supporting documentation. The required documentation for all businesses includes the following:

- ❖ Single Proprietor - Driver's License; Certificate of Degree of Indian Blood (CDIB); Tribal Citizenship Card; Federal Identification Number or Social Security Number; Equipment List (over \$250 value); Current Financial Statement (Profit & Loss Statement); Current Business Federal Income Tax Returns (All Schedules); Copy of Bank Signature Card; Two (2) cancelled checks for accounts payable (No Voided Checks); copy of cancelled payroll checks; Business Portfolio; Any licenses or certificates if applicable; and Other minority certifications.

- ❖ Partnership – Agreement or Amendments; TERO forms P-1; Driver's License; Certificate of Degree of Indian Blood (CDIB); Tribal Citizenship Card; Federal Identification Number or Social Security Number; Equipment List (over \$250 value); Current Financial Statement (Profit & Loss Statement); Current Business Federal Income Tax Returns (All Schedules); Copy of Bank Signature Card; Three (3) cancelled checks for accounts payable; copy of cancelled payroll checks; Business Portfolio; Any licenses or certificates if applicable; and Other minority certifications.

- ❖ Corporation – Articles of Incorporation (showing state approval date); Complete copy of by-laws and certification of incorporation; Front and back copies of all issued and voided stock certifications (not a specimen); Minutes of first and last corporate organizational meetings, All resolutions affecting ownership; Complete copy of stock transfer ledgers and stock register; Proof of stock purchases (i.e., front and back copies of cancelled check, cashier's check, money order, etc.); List of officers and numbers of shares; Sworn statement of proper office that states: Total number of shares; Stock(s) sold; Amount of cash; and Total indebtedness. All information submitted pertaining to the corporation and shareholders shall be signed by the corporation president and attested to by the corporate secretary and shall bear the corporate seal. Also needed: TERO Form M-1; Driver's License; Certificate of Degree of Indian Blood (CDIB); Tribal Citizenship Card; Federal Identification Number or Social Security Number; Equipment List (over \$250 value); Current Financial Statement (Profit & Loss Statement); Current Business Federal Income Tax Returns (All Schedules); Copy of Bank Signature Card; Three (3) cancelled checks for accounts payable; copy of cancelled payroll checks; Business Portfolio; Any licenses or certificates if applicable; and Other minority certifications.

- ❖ LLC – Articles of Incorporation (showing state approval date); Copy of certificate, TERO forms P-1 and M-1; Driver's License; Certificate of Degree of Indian Blood (CDIB); Tribal Citizenship Card; Federal Identification Number or Social Security Number; Equipment List (over \$250 value); Current Financial Statement (Profit & Loss Statement); Current Business Federal Income Tax

Returns (All Schedules); Copy of Bank Signature Card; Two (2) cancelled checks for accounts payable (No Voided Checks); Three (3) cancelled payroll checks; Business Portfolio; Any licenses or certificates if applicable; and Other minority certifications.

❖ Joint Ventures - Joint Ventures are not eligible for TERO Certification. However, an Indian/non-Indian joint venture will be given preference over non-Indian firms, if there are no certified Indian preference unitary firms available.

2. All completed application forms and supporting documentation should be submitted to the TERO Office. Upon submission, the application is initially reviewed by the TERO staff to ensure that all required documents have been submitted. If all application forms and supporting documentation listed in Section IV.A.1. of the TERO Rules and Regulations are not submitted, the application will be considered incomplete and will not be reviewed for approval by the TERO Certification Committee. If additional documentation or clarification is needed, the TERO Office shall contact the applicant. If the requested information is not provided within thirty (30) days from the date of the request by the TERO Office, the application will be considered incomplete and will not be forwarded on to the Certification Committee for approval.
3. The TERO Compliance Monitor shall arrange for a site visit to further determine applicant's eligibility for certification, including verification that the applicant can perform the Occupations listed on their Application for Indian Preference. Upon the TERO Compliance Monitor's site visit, a Certification Evaluation shall be completed by the Compliance Monitor. The Certification Evaluation is submitted to the TERO Certification Committee as part of the supporting documentation with the TERO application.

B. Certification Criteria. The Committee will only review completed applications and will approve or deny the application. The Committee will only consider information provided at the time a completed application is received and placed on the Committee's agenda for review and approval. No subsequent information will be considered unless the Committee specifically requests such information for clarification purposes. In order to receive certification as a firm eligible for Indian preference, an applicant must demonstrate that they meet the following criteria:

(1) Ownership. The firm must be at least 51 percent Indian-owned. The applicant must demonstrate the following:

(a) Formal Ownership. That an Indian or Indians own(s) 51 percent or more of the partnership, corporation, or other arrangement for which the application is being submitted. Such ownership must be embodied in the firm's organic documents, such as its stock ownership or partnership agreement. Ownership includes:

- Financial ownership – i.e., the Indian(s) owns 51 percent or more of the assets and equipment, will receive 51 percent or more of the firm's assets upon dissolution, and will receive 51 percent or more of the profits; and

- Control – i.e., the Indian(s)' 51 percent or more ownership provides him or her with a majority of voting rights or other decisional authority and that all decisions of the firm are to be made by a majority vote except where otherwise required by law.

(b) Value. The Indian owner(s) provided real value for 51 percent or more ownership by providing capital, equipment, real property or similar assets commensurate with the value of the ownership share. It will not be considered "real value" if the Indian(s) purchased the ownership share, directly or indirectly, through a promissory note, the ultimate creditor of which is the non-Indian owner of the firm or an immediate relation thereof, or any similar arrangement, unless a convincing showing can be made that the Indian owner(s) brought such special skills, marketing connections, or similar benefits to the firm that there is a good reason to believe the arrangement would have been entered into even if there were not an Indian participant. The Indian owner(s) may satisfy this requirement by demonstrating further that he or she extended his or her capital-raising capability as far as possible, such that the Indian participant clearly is at risk in the business in relationship to his or her means.

(c) Profit. The Indian owner(s) will receive 51 percent or more of all profits. If there is any provision that gives the non-Indian owner a greater share of the profits, in whatever form and under whatever name, such as through management fees, equipment rental fees, or bonuses tied to profits, certification will be denied. Salary scales will be reviewed to ensure the relative salaries being paid Indian and non-Indian owners are consistent with the skills of the parties and are not being used to circumvent the requirement that Indian owners receive 51 percent or more of the profits.

(2) Management Control. The firm must be under significant Indian management and control. The firm must be able to demonstrate that:

- (a) One or more of the Indian owners must be substantially involved, as a senior level official, in the day-to-day management of the firm as his or her primary employment activity. The Indian owner does not have to be the chief executive officer. However, he or she must, through prior experience or

training, have substantial occupational ties to the area of business in which the firm is engaged such that he or she is qualified to serve in the senior level position and is sufficiently knowledgeable about the firm's activities to be accountable to the Tribe for the firm's activities.

(b) Integrity of Structure. There must be good reason to believe that the firm was not established solely or primarily to take advantage of the Indian preference program. In evaluating an applicant under this criterion the TERO Certification Committee will consider the factors set out below.

(i) History of the Firm. Whether the history of the firm provides reason to believe it was established primarily to take advantage of the Indian preference program, and in particular whether the firm, a portion of the firm, or key actors in the firm originally were associated with a non-Indian-owned business that gained little of business value in terms of capital, expertise, equipment, etc., by adding ownership or merging with an Indian firm.

(ii) Employees. Whether key non-Indian employees of the applicant are former employees of a non-Indian firm with which the Indian firm is or has been affiliated, through a joint venture or other arrangement, such that there is reason to believe the non-Indian firm is controlling the applicant. Whether Indians are employed in all or most of the positions for which qualified Indians are available. A high percentage of non-Indian employees in such positions will provide reason to believe the firm was established primarily to benefit non-Indians.

(iii) Relative Experience and Resources. Whether the experience, expertise, resources, etc., of the non-Indian partner(s) is so much greater than that of the Indian(s) that there is little sound business reason for the non-Indian to accept a junior role in the firm other than to be able to take advantage of the Indian preference program.

(3) Brokers, Vendors, Suppliers, and Distributors. In order to obtain certification, brokers, vendors, suppliers and distributors must own, operate or maintain a store, warehouse, or other establishment in which the materials, supplies, articles or equipment being provided are kept in stock and regularly sold or leased to the public in the usual course of business. Relevant documentation, as determined by TERO, shall be provided to TERO upon request. This requirement shall not apply where the applicant demonstrates proof that it is not customary and usual in the particular business industry to keep the materials, supplies, articles or equipment in stock.

(4) Family Owned Businesses. Families who own and operate a business seeking certification where only one family member involved in the business is a member of

a federally recognized Indian Tribe must demonstrate that the Native family member(s) active in the business are sufficiently qualified to perform their respective duties and are employed full-time in the business in order to be eligible for certification.

C. **Certification Fee.** Upon notification of approval by the TERO Certification Committee, businesses must remit the TERO certification fee of \$150.00 to the TERO Office (businesses that are owned by a Muscogee (Creek) citizen are exempt from the Certification Fee). A business will not be added to the TERO Vendor List until the certification fee is paid. Upon payment of the certification fee, the business will receive a certificate as proof of their certification and will be added to the TERO Vendor List. Certification is valid for a period of one calendar year, measured from the date of issuance of the TERO certificate.

D. **Denial of Certification.** If the application is denied certification, the business will be notified in writing. The applicant shall have 14 days from the receipt of notice of denial to appeal the decision to the TERO Certification Committee. The appeal must be in writing and must justify why the decision should be reconsidered and should include any supporting documentation. The Committee shall review the application for reconsideration and render a written decision either affirming or reversing its prior decision. If the denial of certification is affirmed by the Certification Committee, the business shall have 14 days from the receipt of such notice to submit an appeal to the TERO Appeals Board.

V. Certification Renewal/Amendment/Revocation

- A. All certifications will expire one (1) year from the date of issuance of the vendor's TERO Certificate. Within thirty (30) days of a Vendor's Certification Expiration, the TERO Office will notify the Vendor in writing of the pending expiration.
- B. The Vendor must then complete a Certification Renewal form and any necessary supporting documentation and submit the documents to the TERO Office before the date of issuance of the Vendor's TERO certificate. Failure to submit a completed Certification Renewal form and supporting documentation to the TERO Office by the expiration/original certification date will result in denial of certification renewal.
- C. The Certification Renewal will then be reviewed by the TERO Certification Committee and the TERO Office. Renewal Certification may be denied if the Vendor is determined to no longer meet the requirements for TERO certification.
- D. The TERO renewal fee in the amount of \$75.00 must be remitted to the TERO Office immediately upon notice of certification renewal approval. There will

not be a renewal fee for a Muscogee (Creek) owned business. Failure to remit the required fee will result in removal of the business from the TERO Vendor List.

- E. If at any time a TERO Certified Vendor wishes to amend the Occupations or types of business it is certified to engage in, the Vendor must submit an application listing the additional Occupations they wish to add and provide documentation to support the addition of those occupations that details the Vendor's ability to perform these new Occupations, including new personnel/training, equipment, experience, etc.
- F. If at any time a change occurs in the ownership structure of a Certified Vendor, the Vendor must notify the TERO within 14 days of the date such change takes effect. The TERO may require additional documentation demonstrating that the company still meets the requirements for TERO certification. Failure to report a change in ownership structure or to comply with requests for additional documentation may result in the revocation of a Vendor's TERO certification.
- G. A Vendor's certification status may be reviewed at any time by the TERO Office or Certification Committee to ensure continued compliance with certification requirements.
- H. Certification Revocation. TERO Certification is a privilege granted to companies who meet the Nation's criteria. Companies have no right to such certification and certification may be revoked if such revocation is determined by the TERO Certification Committee to be necessary for any of the following reasons:
 - 1. A change in company ownership such that the company no longer meets the requirements for 51% Native ownership as outlined in MCNCA Title 16 §9 and these rules and regulations.
 - 2. The Vendor has provided poor performance on any contract they have been awarded by the Nation.
 - 3. The Vendor has failed to comply with all directives and/or requests for information of the TERO Office regarding its performance of a contract by the Nation.
 - 4. For any other reason as determined necessary by the Certification Committee in order to preserve the integrity of the TERO program and meet the purposes for which the program was established as outlined in MCNCA Title 16 §9 and these Rules and Regulations.
- I. All Revocation decisions will be made by the TERO Certification Committee in consultation with the TERO Office. Should a Vendor's certification be revoked, the Vendor shall have the same rights to appeal outlined above in Section IV.D.